

Doc Code: AP.PRE.REQ

PTO/SB/33 (07/05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

99-091

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on April 4, 2006

Signature _____

Typed or printed name Michael D. Brinton

Application Number

09/586,742

Filed

June 5, 2000

First Named Inventor

Andrew S. VAN LUCHENE

Art Unit

3625

Examiner

GARG, Yogesh C.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 54,096

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____


Signature

Carson C.K. Fincham

Typed or printed name

(203) 461-7017

Telephone number

April 4, 2006

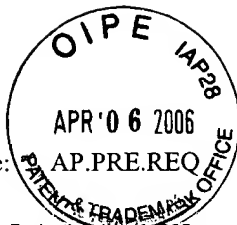
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 3 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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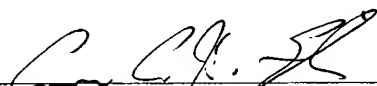
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 99-091	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR on <u>April 4, 2006</u> Signature _____ Typed or printed name <u>Michael D. Brinton</u>		Application Number 09/586,742	Filed June 5, 2000
		First Named Inventor Andrew S. VAN LUCHENE	
		Art Unit 3625	Examiner GARG, Yogesh C.
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>54,096</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		 Signature Carson C.K. Fincham Typed or printed name (203) 461-7017 Telephone number April 4, 2006 Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			

<input checked="" type="checkbox"/> *Total of 3 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CUSTOMER NO. 22927

Applicants: Van Luchene *et al.*
Application No.: 09/586,742
Filed: June 5, 2000
Title: SYSTEMS AND METHODS FOR FACILITATING A
TRANSACTION BY MATCHING SELLER INFORMATION
AND BUYER INFORMATION

Attorney Docket No.: 99-091

Group Art Unit: 3625
Examiner: Yogesh C. Garg

**PRE-APPEAL BRIEF REQUEST FOR REVIEW
of the rejections in the Final Office Action mailed January 6, 2006**

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Examiner:

Applicants respectfully request Pre-Appeal Brief Review of the rejections set forth in the Final Office Action mailed January 6, 2006. No amendments are being filed with this request and this request is being filed with a Notice of Appeal. Review is requested for the reasons set forth in the remarks beginning on the following page.

REMARKS

I. Introduction

Claims **95-97** and **109-137** are currently pending in the present application. The Examiner has withdrawn claims **109-137** from consideration. Of the claims remaining for consideration, claim **95** is independent. All claims stand rejected. In particular, claims **95-97** stand rejected under 35 U.S.C. §102(e) as being allegedly anticipated by U.S. Patent No. 6,598,026 (hereinafter "Ojha"). Applicants traverse this ground for rejection as follows.

II. The Examiner's Rejections

The Examiner has simply failed to set forth a *prima facie* case for anticipation, as the Examiner has failed to show how several claim limitations are taught by Ojha. The §102(e) rejections of claims **95-97** should therefore be reversed.

A. Claims **95-97** – “quality class”

Each of the pending claims recites the limitation of *determining, based on the one or more characteristics of the item, a quality class of the item*. The Examiner addresses this limitation by equating a “quality class” to the “lowest price” of Ojha. Applicants respectfully note, however, that a “price” is not equivalent to a “quality class”, much less a “quality class” as described in Applicants’ specification as filed. While the price of an item may be an indicator of quality in some circumstances, for example, the price is simply not **equivalent** to such a quality (e.g., “better” or “best”). As an example, a “low quality” Porche® automobile will likely be more expensive than even a “high quality” Kia® automobile, such that “sorting” based on price would not yield a determination of a “quality class” associated with either vehicle. Nor are “characteristics” of items equivalent to a “quality class” of the item, as the Examiner appears to allege. A laptop computer may be described as having a characteristic such as a seventeen-inch (17”) screen and a two hundred gigabyte (200 GB) hard drive, but such features are not even

indicative of the “quality class” of the item (*e.g.*, “poor”; as described in Applicants’ specification), much less equivalent thereto.

Further, Applicants have reviewed Ojha and have been unable to locate any teaching of *determining* a “quality class” **based on item characteristics**. In other words, even if a “quality class” could be equated to the “lowest price” of Ojha (which Applicants maintain it cannot), the Examiner has not pointed to any portion of Ojha that teaches determining such a “quality class” based on item characteristics. Nor is it clear, if the Examiner equates the characteristics themselves to “quality classes”, how such “quality classes” are believed to be determined based upon themselves (*e.g.*, a circular logic problem). At least for these reasons, the §102(e) rejections of claims **95-97** should be reversed.

B. Claim 96 – “items do not correspond”

Further, claim **96** recites the limitation of *wherein it is determined that the item desired for purchase by the buyer and the item being offered for sale by the seller **do not correspond***. The Examiner argues that “it is clear that when the buyer, in Ojha, in response to the seller’s list price bids a price lower than the list price for a specific desired product the item desired for purchase by the buyer and the item being offered for sale by the seller do not correspond.” Final Office Action, pg. 7, last two lines to pg. 8, line 1. Applicants respectfully disagree. The Examiner, for example, is attempting to equate the “offers” to the actual “items” offered for sale – which is clearly incorrect. In other words, in Ojha, it is described how a counter-offer procedure may be implemented when two “offers” do not correspond (*i.e.*, where a buyer wants the item for a cheaper price than the seller is willing to sell the item for). In such a case, the items must necessarily correspond; otherwise the offers and/or counter-offers would not be presented (*i.e.*, the buyer will not make an offer for something the buyer is not looking for).

Nowhere does Ojha describe what happens if the item desired by the buyer and the item offered by the seller do not correspond (*i.e.*, the item the buyer wants is not available). In contrast, claim **96** does address this situation. At least for this reason, the §102(e) rejection of claim **96** should be reversed.

Accordingly, at least for the foregoing reasons, the Examiner has failed to show how all the limitations of claims **95-97** are taught by the cited reference, and the Examiner has thus failed to set forth a *prima facie* case for anticipation. The §102(e) rejections of claims **95-97** should therefore be reversed.

III. Conclusion

At least for the foregoing reasons, it is submitted that all claims are clearly in condition for allowance and Pre-Appeal Brief Review is requested to avoid the unnecessary expense of preparing an Appeal Brief in relation to the current rejections.

If there remain any questions regarding the present application or the cited reference, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Carson C.K. Fincham at telephone number 203-461-7017 or via e-mail at cfincham@walkerdigital.com, at the Examiner's convenience.

Respectfully submitted,

April 4, 2006

Date



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